

Motion 522(f)(1)(A) (12/18)

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In re Mary Thao Lehnig) Case No. 19-30226
) Chapter 7
) Judge Beth A. Buchanan
Debtor/s

MOTION TO AVOID JUDICIAL LIEN ON REAL PROPERTY
PURSUANT TO 11 U.S.C. § 522(f)(1)(A)

Mary Thao Lehnig _____ (the "Debtor," whether individually or collectively) moves the court pursuant to 11 U.S.C. § 522(f)(1)(A) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 for an order granting this motion to avoid the judicial lien of

John Soliday Financial Group LLC _____ (the "Creditor").

Memorandum in Support

(1) The Debtor filed a voluntary petition under chapter 7 of the Bankruptcy Code on January 26, 2019 (the "Petition Date").

(2) As of the Petition Date, the Debtor was the owner of the following real property located at 4711 Whitewood Court, Dayton, OH 45424 (the "Property").

The Debtor owns the Property _____ with a fee simple interest _____.

A legal description of the property is attached as Exhibit A.

(3) The value of the Property as of the Petition Date, as set forth in the Debtor's Schedule A _____ was \$ 102,330.00.

(4) The Debtor's interest in the Property as of the Petition Date was \$ 102,330.00.

(5) As of the Petition Date, the Property was subject to certain mortgages/liens in the amounts specified and in the relative priority set forth below:

First mortgage/lien:

Specialized Loan Servicing, LLC

in the amount of \$ 117,999.00. The first mortgage/lien was obtained by the mortgagee/lienholder on April 6, 2007. The first mortgage/lien was filed on April 12, 2007, in the Montgomery County, Ohio Recorder's Office, at Instrument No. 2007-00030371.

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	<p>Additional mortgage/lien:</p> <p style="text-align: center;">Forest Ridge Association</p> <p>in the amount of \$ <u>304.55</u> . The <u>subsequent</u> mortgage/lien was obtained by the mortgagee/ lienholder on <u>July 31, 2013</u> . The <u>subsequent</u> mortgage/lien was filed on <u>July 31, 2013</u> , in the <u>Montgomery County, Ohio Recorder's Office</u> at <u>Instrument No. 2013-00053399</u></p>
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(6) The Creditor obtained a judgment in the amount of \$ 23,743.38 against the Debtor on February 3, 2012 in the Montgomery County, Ohio Common Pleas Court.
The Certificate of Judgment was filed on February 14, 2012 with the Montgomery County, Ohio Common Pleas Court at 2012 CJ 183306 and also re-recorded in the amount of \$16,429.44 at 2016 CJ 201378.

\$ (7) The Debtor has claimed or is entitled to claim an exemption in the Property in the amount of 136,925.00 pursuant to O.R.C. Sec. 2329.66(A)(1).

(8) 11 U.S.C. § 522(f)(2)(A) provides that "a lien shall be considered to impair an exemption to the extent that the sum of: (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any lien." 11 U.S.C. § 522(f)(2)(A).

(9) Using the formula set forth above, the judicial lien of the Creditor impairs the Debtor's exemption, wherefore the judicial lien of the Creditor is avoidable pursuant to 11 U.S.C. § 522(f)(2)(A). In this case we have the following values:

a. Amount of judicial lien	\$ <u>23,743.38</u>
b. Amount of all other liens	\$ <u>118,303.55</u>
c. Value of exemptions	\$ <u>136,925.00</u>
d. Total: lines a + b + c = line d	\$ <u>278,971.93</u>
e. Value of the Debtor's interest in the Property	\$ <u>102,330.00</u>
f. Subtract line e from line d	\$ <u>176,641.93</u>

Extent of exemption impairment: \$ 176,641.93

If line f is equal to or greater than line a, the entire judicial lien is avoided

If line f is less than line a, a portion of the judicial lien may be avoided

(10) Upon the entry of discharge,

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the judicial lien of the Creditor on the Property will be avoided. If the Creditor fails to timely release the judicial lien, the Debtor may submit an order granting this motion to the applicable court or recorder's office as evidence of the release of the judicial lien.

WHEREFORE, the Debtor requests that the court grant the Motion to Avoid Judicial Lien on Real Property pursuant to 11 U.S.C. § 522(f)(1)(A).

Respectfully submitted,

/s/ Melanie Reitz, Esq.
Melanie Reitz, Esq. (0078852)
Richard E. West Co., LPA
195 E. Central Ave., Springboro, OH 45066
Ph: (937) 601-0401
Fx: (937) 552-2138
bknotice@debtfreeohio.com

Notice of Motion

Debtor has filed a Motion to Avoid Judicial Lien on Real Property pursuant to 11 U.S.C. § 522(f)(1)(A).

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the court to grant the relief sought in the motion, then on or before **twenty-one (21) days from the date set forth in the certificate of service for the motion**, you must file with the court a response explaining your position by mailing your response by first class mail to:

United States Bankruptcy Court, 120 West Third Street, Dayton, Ohio 45402

OR your attorney must file a response using the court's ECF System.

The court must **receive** your response on or before the above date.

You must also send a copy of your response either by 1) the court's ECF System or by 2) first class mail to:

Mary Thao Lehnig, 4711 Whitewood Court, Dayton, OH 45424

Melanie Reitz, Richard E. West Co. LPA, 195 E. Central Ave., Springboro, OH 45066

Erin C. Rennecker, 576 Mount Court, Suite B, Lebanon, OH 45036

Office of the US Trustee, 170 N. High Street, Suite 200, Columbus, OH 43215-2403

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If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting the relief without further hearing or notice.

Certificate of Service

I hereby certify that a copy of the foregoing Motion to Avoid Judicial Lien on Real Property Pursuant to 11 U.S.C. § 522(f)(1)(A) was served electronically on the date of filing through the court's ECF system on all ECF participants registered in this case at the email address registered with the court and

by first class mail on March 20, 2019 addressed to:

JOHN SOLIDAY FINANCIAL GROUP LLC, CO CHEEK LAW OFFICES LLC, 471 E BROAD ST. 12TH FLOOR, COLUMBUS OH 43215
Forest Ridge Association HOA, PO Box 24750, Huber Heights, OH 45424
Specialized Loan Servicing LLC, 8742 Lucent Blvd., Highlands Ranch, CO 80129
Synchrony Bank c/o PRA Receivables Management LLC, PO Box 41021, Norfolk, VA 23541
Mary Thao Lehnig, 4711 Whitewood Court, Dayton, OH 45424

[For parties served other than by first class mail pursuant to Federal Rule of Bankruptcy Procedure 7004, add the following language.]

by _____ certified mail _____ on March 20, 2019 addressed to:
John Soliday Financial Group LLC, c/o Toni C. Cheek statutory agent, 471 E. Broad St., Ste. 1201, Columbus, OH 43215

/s/ Melanie Reitz, Esq.
Melanie Reitz, Esq. (0078852)
Richard E. West Co., LPA
195 E. Central Ave., Springboro, OH 45066
Ph: (937) 601-0401
Fx: (937) 552-2138
bknotice@debtfreeohio.com

03:25pm DECEMBER 10, 2004

KARL L. KEIFER, COUNTY AUDITOR

Conv/Tran #: 26056

\$.00

\$35.00 12/10/04 15:27:05
DEED-04-138976 0003
Montgomery County--
Judy Dodge Recorder

AFFIDAVIT

STATE OF OHIO)
)
COUNTY OF MONTGOMERY) SS:

MARY T. LEHNIG being first duly sworn says that TIM S. LEHNIG aka TIMOTHY S. LEHNIG died on October 29, 2004, that she and her husband, TIM S. LEHNIG aka TIMOTHY S. LEHNIG, were the owners of the following described real estate for their joint lives, remainder to the survivor of them by Deed recorded in Microfiche number 98-0085 B11 in the Montgomery County, Ohio, Deed Records:

Situated in the City of Dayton, County of Montgomery and State of Ohio, and being Lot Numbered EIGHTY THOUSAND FOUR HUNDRED FOURTEEN (80414) of the consecutive numbers of lots on the revised plat of the said City of Dayton, Ohio.

Commonly known as: 4711 Whitewood Court, Dayton, OH 45424

Parcel ID: R722-173-21-6

* Said property is presently in the names of TIM S. LEHNIG aka TIMOTHY S. LEHNIG and MARY T. LEHNIG.

That, MARY T. LEHNIG, by virtue of the death of TIM S. LEHNIG aka TIMOTHY S. LEHNIG, is now vested in the entire interest of the above described real estate.

That the address of MARY T. LEHNIG is 4711 Whitewood Court, Dayton, OH 45424.

EXHIBIT A